

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 17, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JORGE A. SANDOVAL,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

No. 4:21-cv-05003-SMJ

**ORDER TO PROCEED *IN FORMA*
PAUPERIS AND SUMMARILY
DISMISSING HABEAS CORPUS
PETITION**

Petitioner Jorge A. Sandoval, a prisoner housed at the Coyote Ridge Corrections Center, filed a *pro se* application for a writ of habeas corpus by a person in State custody under 28 U.S.C. § 2254, ECF No. 1. It appears Petitioner lacks sufficient funds to prosecute this action, so his application to proceed *in forma pauperis* is granted. Having reviewed the petition and the record in this matter, the Court is fully informed and dismisses the petition because of several deficiencies summarized below.

PROPER RESPONDENT

The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is

1 incarcerated, the proper respondent is generally the warden of the institution where
2 the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 893 (9th
3 Cir. 1996). Therefore, only Jeffrey Uttecht is the proper Respondent to this action.

4 EXHAUSTION REQUIREMENT

5 Petitioner challenges his 2019 Benton County guilty plea to unspecified
6 charges. ECF No. 1 at 1. He invites the Court to “see case files,” but provides no
7 such files. *Id.* He was sentenced to 51 months incarceration. *Id.* Petitioner did not
8 appeal the judgment or convictions. *Id.* at 2. He sought no other state collateral
9 review of his convictions. *Id.* at 3.

10 Before a federal court may grant habeas corpus relief to a state prisoner, the
11 prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
12 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
13 a prisoner give the state courts an opportunity to act on his claims before he presents
14 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
15 petitioner has not exhausted a claim for relief if they have a right under state law to
16 raise the claim by an available procedure. *See id.*; 28 U.S.C. § 2254(c).

17 To meet the exhaustion requirement, the petitioner must have “fairly
18 present[ed] his claim in each appropriate state court (including a state supreme court
19 with powers of discretionary review), thereby alerting that court to the federal
20 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.

364, 365–66 (1995). A petitioner fairly presents a claim to a state court by describing the factual or legal bases for that claim and by alerting the state court “to the fact that the . . . [petitioner is] asserting claims under the United States Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state court and a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513 U.S. at 365–66.

Furthermore, to fairly present a claim, the petitioner “must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process.” *O’Sullivan*, 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts, the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275 (1971). It appears from the face of the petition and the attached documents that Petitioner has not exhausted his state court remedies as to each of his grounds for relief. *See* ECF No. 1.

GROUND FOR FEDERAL HABEAS CORPUS RELIEF

Throughout the petition, Petitioner invites the Court to “see” his numbered attachments, A-1 to A-25. *Id.* at 5–13. In his grounds for federal habeas relief, Petitioner argues the State of Washington has no jurisdiction to decide federal constitutional matters. *Id.* at 17-19.

1 It has long been settled that state courts are competent to decide questions
2 arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898)
3 (“It is the duty of the state court, as much as it is that of the federal courts, when the
4 question of the validity of a state statute is necessarily involved, as being in alleged
5 violation of any provision of the federal constitution, to decide that question, and to
6 hold the law void if it violate that instrument.”); *see also Worldwide Church of God*
7 *v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as
8 competent as federal courts to decide federal constitutional matters). Petitioner’s
9 arguments to the contrary are meritless.

10 Petitioner also asserts that the Washington State Constitution contradicts the
11 U.S. Constitution regarding the Fifth Amendment right to “presentment or
12 indictment of a Grand Jury.” ECF No. 1 at 17. He claims “no bill of indictment”
13 was brought against him, rendering his arrest, conviction, and imprisonment illegal.
14 *Id.* Petitioner seems to argue that because the state courts have allegedly defied
15 “federally established procedures and processes for the adjudication of crimes,”
16 only “a court of federal jurisdiction” has jurisdiction over his claims. *Id.*

17 The U.S. Supreme Court has long recognized that, “[p]rosecution by
18 information instead of by indictment is provided for by the laws of Washington.
19 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277
20 U.S. 81, 86 (1928). There is no federal constitutional violation when a prosecuting

1 attorney's criminal information is substituted for the grand jury's indictment. *See*
2 *Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment
3 is essential to due process of law and that a state violates the Fourteenth Amendment
4 by prosecuting a defendant with a criminal information). Petitioner's assertions to
5 the contrary are legally frivolous.

6 Because it plainly appears from the petition and accompanying documents
7 that Petitioner is not entitled to relief in this Court, **IT IS HEREBY ORDERED:**

8 1. The application to proceed *in forma pauperis*, **ECF No. 6**, is
9 **GRANTED.**

10 2. The petition, **ECF No. 1**, is **DISMISSED** under Rule 4 of the Rules
11 Governing Section 2254 Cases in the United States District Courts.

12 3. All pending motions are **DENIED AS MOOT.**

13 4. The Clerk's Office is directed to **ENTER JUDGMENT.**

14 5. The Clerk's Office is directed to **CLOSE** this file.

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1 **6.** The Court certifies that, under 28 U.S.C. § 1915(a)(3), an appeal from
2 this decision could not be taken in good faith and there is no basis upon
3 which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c);
4 Fed. R. App. P. 22(b). A certificate of appealability is therefore
5 **DENIED.**

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
7 provide copies to Petitioner.

8 **DATED** this 17th day of March 2021.

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 SALVADOR MENDEZ, JR.
 United States District Judge